

1 IT IS FURTHER ORDERED that this Decision shall become effective
2 immediately.

3 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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5 
6 CHAIRMAN

7 
8 COMMISSIONER

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10 COMMISSIONER

11 IN WITNESS WHEREOF, I, JAMES MATTHEWS, Executive
12 Secretary of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the
14 official seal of this Commission to be affixed
15 at the Capitol, in the City of Phoenix, this 19
16 day of July, 1990.

17 
18 JAMES MATTHEWS

19 Executive Secretary

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BEFORE THE ARIZONA CORPORATION COMMISSION

RICHARD KIMBALL
Chairman
MARCIA WEEKS
Commissioner
RENZ D. JENNINGS
Commissioner

IN THE MATTER OF THE APPLICATION) DOCKET NO. U-2447-84-225
OF THE TUCCELL PARTNERSHIP FOR A)
CERTIFICATE OF CONVENIENCE AND)
NECESSITY TO CONSTRUCT A CELLULAR)
SYSTEM ON FREQUENCY BLOCK B IN)
THE TUCSON, ARIZONA STANDARD)
METROPOLITAN STATISTICAL AREA.)

DECISION NO. 54377

OPINION AND ORDER

DATE OF HEARING: November 5, 1984
PLACE OF HEARING: Tucson, Arizona
HEARING OFFICER: Evo J. De Concini
APPEARANCES: Shimmel, Hill, Bishop & Gruender, P.C.
by Michael M. Giant
and Dwight M. Whitley, Jr.,
Attorneys for the TuCell Limited Partnership;
Fleischman & Walsh, P.C.
by R. Stephen Berry, and
Snell & Wilmer,
by Charles A. Bischoff,
Attorneys for Metro Mobile CTS of Phoenix,
Inc. and Metro Mobile CTS, a Texas Limited
Partnership;
Elizabeth A. Celis, Legal Division,
Attorney for the Arizona Corporation
Commission Staff.

BY THE COMMISSION:

On September 13, 1984, TuCell Limited Partnership
(hereinafter also referred to as "TuCell" or "Applicant"), filed
an Application with the Arizona Corporation Commission ("Commis-
sion") for a Certificate of Convenience and Necessity ("Certifi-
cate") authorizing it to construct and operate a cellular

1 communications system on Frequency Block E in the Tucson,
2 Arizona Standard Metropolitan Statistical Area ("SMSA").

3 On October 12, 1984, the Hearing Officer issued a
4 Procedural Order in the captioned matter. Therein, noticing
5 procedures as well as a time and place for the hearing were
6 established.

7 On October 24, 1984, Metro Mobile CTS of Phoenix, Inc.
8 and Metro Mobile CTS, a Texas Limited Partnership ("Intervenor"
9 or "Metro Mobile"), filed a joint Petition to Intervene.

10 On October 26, 1984, TuCell filed Opposition to the
11 Petition to Intervene.

12 On October 29, 1984, Metro Mobile filed Motions re-
13 questing Applicant be required to amend its Application and for
14 a Continuance.

15 On October 30, 1984, TuCell filed a Response to said
16 Motions.

17 All Petitions and Motions were properly disposed of by
18 a Second Procedural Order issued on October 30, 1984.

19 Prior to the hearing, discovery was conducted and on
20 November 2, 1984, the deposition of David R. Laube, the Financial
21 Vice President of TuCell, was taken. (Transcript on file).

22 Pursuant to notice, this matter came on for hearing
23 before a duly authorized Hearing Officer of the Commission at its
24 offices in Tucson, Arizona, on November 5, 1984. Applicant and
25 Intervenor appeared at the hearing and were represented by coun-
26 sel. The Commission's Utilities Division Staff ("Staff") also
27 entered an appearance through the Commission's Legal Division.

28 ...

DISCUSSION

Before specifically setting forth our findings and conclusions herein, we believe it appropriate to more fully identify the parties herein, their interest thereto and discuss the major points raised by Intervenor and Staff.

TuCell is a Delaware Limited Partnership composed of NewVector Communications, Inc. ("NewVector"), as general partner; Arizona Telephone Company ("AzTel") and United Telephone System, Inc. ("United"), as limited partners.

Pursuant to the Partnership Agreement filed with the Application, NewVector, will hold a 61% interest; AzTel and United, will hold 25.35% and 13.65% interest respectively.

Both NewVector and AzTel already hold other Certificates of Convenience and Necessity issued by this Commission.

United is a corporation organized and existing under the laws of the State of Kansas. It operates telephone/telecommunications businesses in a variety of other state jurisdictions but not in Arizona.

NewVector is presently a provider of cellular communications service in the Phoenix, Arizona SMSA by virtue of a Certificate granted in Decision No. 53740, dated September 14, 1983, and Decision No. 53864, dated December 23, 1983.

NewVector is a wholly-owned subsidiary of U S West, Inc. ("U S West") and an affiliate of The Mountain States Telephone & Telegraph Company ("Mountain States") which presently provides wireline telephone service in the Tucson Metropolitan Statistical Area ("MSA"). (Tr., p. 115).

U S West is the regional holding company for

1 Mountain States, Pacific Northwest Bell Telephone Company and
2 Northwestern Bell Telephone Company.

3 Intervenor Metro Mobile CTS of Phoenix, Inc. is a
4 corporation duly organized under the laws of the State of Arizona.
5 Metro Mobile CTS, a Texas Limited Partnership, controls through a
6 subsidiary, Metro Mobile CTS of Phoenix, Inc.

7 Metro Mobile CTS of Phoenix, Inc. is currently reselling
8 cellular telephone service provided by NewVector in the Phoenix
9 area. In addition, by Decision No. 54231, dated November 8,
10 1984, Metro Mobile CTS of Phoenix, Inc. was also granted a Certif-
11 icate of Convenience and Necessity to construct and operate a
12 cellular radio communications system within the Phoenix, Arizona
13 SMSA.

14 During the hearing and in their Post Hearing Briefs,
15 Intervenor and Staff raised several points of concern regarding
16 this Application. They are:

17 (1) The proposed Tariff under which TuCell will sell,
18 at wholesale, its cellular services.

19 (2) The establishment of rigorous bookkeeping and
20 auditing standards ". . . to protect against the subsidization of
21 NewVector/TuCell's costs by any other related public service
22 entities." (Metro Mobile Brief, p. 3).

23 (3) Order NewVector/TuCell to design its system in
24 such a way as to avoid discriminatory and anticompetitive treat-
25 ment of resellers not affiliated with NewVector Communications,
26 Inc.

27 (4) Require TuCell to make particular showings that
28 the participation of AzTel in the Partnership has been reviewed

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Decision No. 54377
Page 5

Docket No. U-2447-R-225

1 and approved by this Commission under the standards of A.R.S.
2 Sec. 40-285D.

3 (5) Reopen the record and require NewVector/TuCell
4 "... to make the necessary fitness showing." (Metro Mobile
5 Brief, p. 4).

6 We shall review and attempt to answer these questions one
7 at a time.

8 (1) Re: Tariff --

9 In our opinion, this is a legitimate concern raised both
10 by the Intervenor and Staff. TuCell does not plan to market its
11 services to the end customer. (Tr., p. 117). Intervenor, on the
12 other hand, plans to purchase wholesale numbers from TuCell under
13 the Tariff and retail them to the end customers in Tucson.
14 (Tr., p. 24).

15 Since this hearing was not noticed as either a tariff
16 or a marketing proceeding, the parties stipulated that: "Any
17 consideration or approval of the tariff be deferred until a later
18 time." (Hearing Tr., p. 11); (Deposition Tr., p. 12). Accord-
19 ingly, the Tariff question will be disposed of in the Order por-
20 tion of this Decision.

21 (2) Re: Establishment of Bookkeeping
22 and Auditing Standards --

23 During the hearing, NewVector's Financial Vice President
24 testified extensively regarding the accounting controls, separa-
25 tions and auditing procedures followed and to be followed by both
26 TuCell and its general partner. (Hearing Tr., pp. 34-37;
27 pp. 68-72; and pp. 77-78); (Deposition Tr., pp. 78, 91, 115 and
28 117). Applicant has indicated its intent on the record to

1 maintain separate books of record of account for TuCell and to
2 delineate the accounts and transactions which apply to the
3 NewVector Phoenix and Tucson activities "such that an accurate
4 and clearly auditable level of activity is able to be ascertain-
5 ed." (Hearing Tr., p. 35).

6 On pages 77 and 78 of the Hearing Transcript, the
7 Financial Vice President specifically stated:

8 "NewVector Communications has a requirement to
9 be audited as part of U S West Audit. NewVector
10 Communications is in the business of running cellu-
11 lar systems, many of which are partnerships. There-
12 fore, the entire setup of the books and records of
13 account of NewVector Communications are organized
14 to facilitate the separateness of transactions to
15 allow auditors to see how the transactions have
16 been calculated, and as part of the entire audit
17 of NewVector Communications. Auditors examine all
18 of the allocations and charges to all of the operating
19 entities whether they are separate partnerships or
20 whether they are just divisions of NewVector
21 Communications."

22 In addition, in his Post Hearing Memorandum at page 6,
23 Applicant's attorney states: "TuCell will maintain separate
24 books and records of account which will be audited regularly by
25 a certified public accounting firm. Additionally, separate ac-
26 counts are maintained by TuCell's general partner, NewVector, to
27 distinguish between activities relating to its role as general
28 partner in TuCell and other activities which it conducts."

29 All the parties seem to be in agreement that maintenance
30 of separate books and records in a readily auditable form by
31 TuCell and NewVector is not only desirable but essential. We
32 concur.

33 (3) Re: Discriminatory and Anticompetitive
34 Treatment of Resellers --

35 As previously stated herein, Intervenor plans to

1 purchase wholesale numbers from Applicant and retail them to its
2 customers in Tucson. Applicant also plans to sell its wholesale
3 service under tariff to NewVector Retail Service, Inc., which is
4 a wholly-owned retail subsidiary of NewVector Communications,
5 Inc. (Hearing Tr., pp. 88 and 117), and which will compete with
6 Intervenor and other independent resellers.

7 It appears that in Phoenix, Metro Mobile is the non-
8 wireline cellular licensee and currently operates as a reseller
9 of NewVector Communications' wholesale service in that market.
10 In this activity, it is in direct competition with NewVector
11 Retail Service, Inc.

12 Metro Mobile alleges that whenever anyone calls one of
13 its customer's cellular units, when the unit is out of service
14 range (or no one is there to answer), the caller is greeted with
15 a recording such as:

16 "The Vector One service you have called is out
17 of range or not answering at this time. Please
try your call again later." (Emphasis added).

18 Since NewVector Retail Service, Inc. uses the "Vector
19 One" servicemark of NewVector Communications and NewVector Retail
20 Service, Inc. is a direct competitor, Intervenor claims that it
21 is a misleading and anticompetitive practice to refer to numbers
22 merchandised by Metro Mobile as "Vector One" numbers. Intervenor
23 is concerned that, directly or indirectly, Applicant might enact
24 the same answering procedure in Tucson. Thus, Intervenor asks
25 that TuCell's Certificate require it to design and operate its
26 system so Metro Mobile's cellular customers will not have their
27 numbers identified in any fashion as NewVector numbers.

28 Although Applicant indicated it has not reached a

1 decision as to whether such answering procedure will be enacted
2 in Tucson (Hearing Tr., p. 92), it nonetheless claims in has the
3 prerogative to use this servicemark or trademark should it so
4 choose. Perhaps so. In the meantime, however, Intervenor has
5 also indicated that it has pending before the FCC a petition
6 involving this precise question. While we are not convinced that
7 TuCell has the prerogative to utilize the answering procedure
8 complained of by Intervenor, we are also not convinced that this
9 is the appropriate proceeding in which to determine whether
10 TuCell's use of this answering procedure would be so anticompet-
11 itive in nature as to warrant a blanket prohibition. Accordingly
12 we will require that this Docket remain open for the purpose of
13 receiving such additional briefing or testimony as the Hearing
14 Officer, by subsequent Procedural Order, may require.

15 4. Re: AzTel Participation --

16 Intervenor questions the financial participation of
17 AzTel in TuCell without prior approval from this Commission.
18 Metro Mobile bases its claim on A.R.S. Sec. 40-285D and the allega-
19 tion that AzTel's participation in the TuCell Partnership consti-
20 tutes a purchase of "capital stock" and an investment contract.

21 Staff takes the position that A.R.S. Sec. 40-285D does
22 not apply to AzTel's participation in the TuCell Partnership and
23 is "... not convinced that the TuCell Partnership Agreement
24 constitutes an investment contract." (Staff's Response @ p. 4).

25 Applicant has demonstrated that AzTel has available
26 more than sufficient "retained earnings" to devote to its commit-
27 ment to TuCell. (Hearing Tr., pp. 129-131). We do not believe
28 regulatory approvals are required for the commitment of such

1 funds. However, in the past, AzTel has always been ably repre-
2 sented by counsel in matters before this Commission. We are confi-
3 dent that if AzTel's counsel believes that in order for AzTel to
4 lawfully participate in the TuCell Partnership it must obtain
5 financing authorization from this Commission, the proper applica-
6 tion will be submitted.

7 5. Re: Reopening of Record to Show Fitness --

8 Lastly, Intervenor suggests that on this record TuCell
9 is not financially or technically qualified to construct the
10 Tucson cellular system.

11 In its Response, Staff "... requests that the Commis-
12 sion enter an Order in TuCell's Application for a Certificate of
13 Convenience and Necessity" but takes no position on this partic-
14 ular issue.

15 We believe there is abundant evidence in the record
16 that Applicant is both financially and technically qualified to
17 construct and operate the contemplated cellular system in Tucson.

18 In addition, the FCC had already granted TuCell a con-
19 struction permit to establish the cellular mobile communications
20 system, finding that TuCell "is legally, technically, financially
21 and otherwise qualified to construct and operate the proposed
22 cellular system as a Commission licensee." (Exhibit No. A-2).

23 Accordingly, the request to reopen the record is denied.

24 . . .

25 Having considered the entire record herein and being
26 fully advised in the premises, the Commission finds, concludes
27 and orders the following:

28 FINDINGS OF FACT

1. TuCell Limited Partnership, formed pursuant to the

1 provisions of the Delaware Limited Partnership Act, proposes to
2 construct and operate a cellular communications system on Fre-
3 quency Block B in Tucson, Arizona Standard Metropolitan Statisti-
4 cal Area ("SMSA").

5 2. On September 13, 1984, TuCell filed an Application
6 with the Commission for a Certificate of Convenience and
7 Necessity.

8 3. The threshold question of whether or not a Certifi-
9 cate is required under A.R.S. Sec. 40-281 prior to the construc-
10 tion of a cellular communications system has been answered in
11 Decision No. 53740, dated September 14, 1983. Accordingly, the
12 Commission finds that Decision No. 53740 is controlling in the
13 instant situation.

14 4. By Memorandum Opinion and Order, adopted October 29,
15 1984, and released November 2, 1984, the Federal Communications
16 Commission ("FCC") has granted TuCell a construction permit to
17 establish the cellular communications system on Frequency Block
18 B in the Tucson area. In this Opinion, the FCC found that TuCell
19 "is legally, technically, financially and otherwise qualified to
20 construct and operate the proposed cellular system as a Commis-
21 sion licensee. We further find that approval of the settlement
22 agreement and the grant of TuCell's Application will serve the
23 public interest, convenience and necessity." (File Nos.
24 26679-CL-P-83 and 27148-CL-P-83).

25 5. Recognizing that these FCC findings and determina-
26 tions essentially duplicate those which traditionally are made by
27 this Commission under A.R.S. Sec. 40-281, TuCell, at the November
28 5, 1984 hearing, offered evidence on matters of public need as

1 well as its technical and financial qualifications.

2 6. With respect to technical fitness, the general
3 partner of TuCell, NewVector, has extensive experience in the
4 design, construction and operation of cellular systems. NewVector
5 has already constructed and placed into commercial operation,
6 cellular systems in Denver, Seattle, Minneapolis and Phoenix.
7 (Hearing Tr., p. 45).

8 7. The FCC has approved the Partnership Agreement
9 (Hearing Tr., p. 12) and all partners have executed same, cert-
10 ifying, among other things, that each will "make its pro-rata
11 contributions to the Partnership." (Exhibit B to the Applica-
12 tion). Additionally, Applicant's Exhibit No. 1, a letter dated
13 November 1, 1984, from the Chief Financial Officer of U S West,
14 confirms the financial support of U S West to the general partner
15 for its involvement in the TuCell Partnership. Evidence received
16 at time of hearing from the President of AzTel indicates that it
17 has more than sufficient liquidity to meet its funding obliga-
18 tions to TuCell and further that United has assets in excess of
19 two billion dollars upon which it can meet its financial obliga-
20 tions to TuCell.

21 8. The FCC has determined that need for cellular com-
22 munications services exists on a nationwide basis. Cellular
23 Communications Systems, 86 FCC 2d 469 (1981) and Cellular
24 Reconsideration Order, 89 FCC 2d 58 (1982). (That issue may,
25 therefore, have been preempted in state certification proceedings;
26 see also ACC Decision No. 53740 @ p. 5). Market research has
27 indicated considerable demand in the Tucson area for the type of
28 communications service contemplated by TuCell and presently not

1 being provided by anyone else

2 9. TuCell does not plan to own or construct any facilities
3 in the public right-of-way and, therefore, no municipal
4 franchise or consents are required.

5 10. The parties have stipulated that "any consideration
6 or approval of a tariff be deferred until a later time."

7 11. Testimony received at time of hearing indicates
8 that the TuCell Partnership Agreement provides for separate books
9 of record and account to be maintained which will be audited
10 regularly. Additionally, separate accounts are maintained by
11 TuCell's general partner, NewVector, to distinguish, for example,
12 between activities relating to its role as general partner in
13 TuCell and its operation of the Phoenix cellular system.
14 (Hearing Tr., pp. 34-35 and pp. 77-78). These accounting practices
15 and separations are appropriate and should be continued.

16 CONCLUSIONS OF LAW

17 1. TuCell is a public service corporation within the
18 meaning of Article XV of the Arizona Constitution and a telephone
19 corporation within the meaning of A.R.S. Sec. 40-281.

20 2. The Commission has jurisdiction over TuCell and of
21 the subject matter of this Application.

22 3. There exists a public necessity for a cellular
23 radio/telephone communications system within the Tucson,
24 Arizona SMSA.

25 4. TuCell is a fit, able and willing entity to provide
26 such cellular radio/telephone communications service.

27 5. TuCell should be granted a Certificate of Convenience
28 and Necessity to construct and operate a cellular

1 radio/telephone system within the Tucson, Arizona SMSA upon the
2 condition that it file with the Commission initial tariff (in-
3 cluding terms and conditions of resale), at least 120 days prior
4 to their effective date).

5 ORDER

6 WHEREFORE, IT IS ORDERED, that the Application of TuCell
7 Partnership for a Certificate of Convenience and Necessity to
8 construct and operate a cellular radio communications (telephone)
9 system on Frequency Block B in the Tucson, Arizona Standard
10 Metropolitan Statistical Area be, and the same is hereby granted.

11 IT IS FURTHER ORDERED, that the Certificate of Public
12 Convenience and Necessity granted herein shall be expressly con-
13 ditional upon TuCell Partnership filing initial tariffs, rules
14 and regulations (including terms and conditions of resale) at
15 least 120 days prior to their effective date, with public hearings
16 on said initial tariffs, rules and regulations (including terms
17 and conditions of resale) to be held at a time and place to be
18 set by subsequent Procedural Order.

19 IT IS FURTHER ORDERED, that TuCell Partnership shall
20 not begin service to any customer prior to having an approved
21 set of tariffs, rules and regulations on file with this
22 Commission.

23 IT IS FURTHER ORDERED, that a copy of said tariffs,
24 rules and regulations shall be served on all parties of record
25 and notice of their filing with the Commission shall be published
26 in a newspaper or newspapers of general circulation in Tucson,
27 Arizona within seven (7) days of filing. Said notice shall be
28 in a form acceptable to Staff.

1 IT IS FURTHER ORDERED, that TuCell Partnership shall
2 keep its books and records in such a manner as to be amenable to
3 periodic audit, with the contributions of all partners and any
4 additional sources of capital clearly indentifiable. As the
5 general partner, NewVector Communications, Inc. shall keep separate
6 accounts and records of all transactions concerning the Phoenix and
7 Tucson system. It is the Commission's intention and desire to
8 have all funds clearly identifiable and easily traceable; to have
9 implemented an accounting system which is readily auditable and
10 which provides the basis for proper separation of investments,
11 costs and expense by jurisdiction and to preclude any improper
12 intermingling of funds and any improper subsidization. Further-
13 more, NewVector Communications, Inc., as the controlling and man-
14 aging partner of the TuCell system, shall maintain financial ac-
15 counts which identify allocations to separate wholesale and retail
16 operations. Such allocations to be examined and certified as true
17 and correct by independent audit if and when the Commission, in
18 its discretion, determines that such an independent audit is
19 appropriate.

20 IT IS FURTHER ORDERED, that Arizona Telephone Company,
21 Inc., as a TuCell limited partner and an Arizona public service
22 corporation subject to the jurisdiction of this Commission, be,
23 and is hereby directed to notify this Commission in writing
24 fifteen (15) days prior to the commitment and transfer of funds
25 to TuCell when said funds are derived from sources other than
26 retained earnings. Upon the receipt of such notification, Staff
27 shall investigate the matter and, if necessary, set it for
28 hearing.

EDC/kk

Decision No. 4377
Page 1

Docket No. U-2447-84-225

1 IT IS FURTHER ORDERED, that this Docket shall remain
2 open for the purpose of receiving such additional briefing or
3 testimony as the Hearing Officer may require.

4 IT IS FURTHER ORDERED, that the request of Intervenor
5 to Reopen the Record be, and same is hereby denied.

6 IT IS FURTHER ORDERED, that this Decision shall become
7 effective immediately.

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BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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CHAIRMAN

COMMISSIONER

COMMISSIONER

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IN WITNESS WHEREOF, I, G. C. ANDERSON, JR.,
Executive Secretary of the Arizona
Corporation Commission, have hereunto set my
hand and caused the official seal of this
Commission to be affixed at the Capitol, in
the City of Phoenix, this 14th day
of February, 1985.

G. C. ANDERSON, JR.,
Executive Secretary

APPENDIX #5

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION)
OF U S WEST COMMUNICATIONS, INC. FOR A)
HEARING TO DETERMINE THE EARNINGS OF)
THE COMPANY, THE FAIR VALUE OF THE)
COMPANY FOR RATE MAKING PURPOSES,)
TO FIX A JUST AND REASONABLE RATE OF)
RETURN THEREON AND TO APPROVE RATE)
SCHEDULES DESIGNED TO DEVELOP SUCH)
RETURN)

DOCKET NO. _____

DIRECT TESTIMONY OF

DONALD K. MASON

U S WEST COMMUNICATIONS, INC.

JULY 15, 1993

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1 A. The corresponding growth in switched access minutes purchased by toll
2 competitors is the primary evidence that suggest toll is continuing to
3 grow at 6-8% per year. National data also supports this conclusion. As
4 shown in Gary Rees' direct testimony, competitors' originating switched
5 access minutes continue to grow while USWC toll minutes are declining
6 year over year. This does not even consider the impact in growth of
7 special access circuits. The impact of this shift flows through to the
8 revenues USWC receives. For every minute of toll usage, USWC
9 receives \$.15-.20 versus about \$.10 received from switched access.
10 Considering the millions of minutes in competitive loss, these nickels
11 and dimes add up to large revenue amounts. If USWC's 1992 toll growth
12 rate had maintained historic levels, USWC would have realized over \$2
13 million in additional revenue by handling the minutes as toll revenue
14 instead of switched access.

15 Local Exchange Competition

16 Q. WHAT TYPES OF COMPETITION IS USWC FACING TODAY IN THE
17 LOCAL EXCHANGE AREA?

18 A. In addition to alternative providers of competitive private line facilities
19 reviewed in an earlier section, cellular provides an alternative wireless
20 service to basic exchange service.

21 Q. WHO ARE THE PRIMARY CELLULAR CARRIERS IN ARIZONA
22 TODAY?

23 A. Bell Atlantic and PacTel provide cellular service in competition with U S
24 West in the Phoenix and Tucson markets. Each of these RBOCs is a
25 significant cellular player being ranked number 4 and 5 nationally in
26 terms of population served.

27 Q. WHAT TYPE OF GROWTH RATES IS CELLULAR EXPERIENCING
28 TODAY?

1 A. During 1992, the cellular industry posted a 46% increase in the number
2 of cellular customers. Nationally there are now over 11 million
3 subscribers of cellular service. In 1992, an estimated 2,500,000 more
4 cellular phones were used than in 1990, while only 1,900,000 lines were
5 added to the landline network in the same time frame.

6 Q. WHAT IMPACT HAS THE INTRODUCTION OF CELLULAR
7 SERVICE HAD ON USWC BASIC EXCHANGE SERVICE?

8 A. While there is little evidence today that cellular service is actually
9 replacing traditional wireline service, clearly a portion of the usage that
10 is now carried by cellular carriers was previously carried by landline
11 carriers. Not only is local and coin usage impacted, but toll usage also.
12 Long distance calls placed on cellular phones may be carried by the
13 cellular carrier's network which offer both intraLATA and interLATA
14 calling. In addition, growth in cellular has likely impacted the sales of
15 additional lines to the landline network. As prices continue to decline
16 for cellular service, it can be expected that cellular will begin to compete
17 directly with wireline services and other wireless services for basic voice
18 telephone service. As features and services grow, cellular will begin to
19 look more and more like basic telephone service. For example, cellular
20 companies are just now beginning to develop ways to effectively
21 transport data over existing cellular networks using packet technology.

22 FUTURE COMPETITION IN LOCAL EXCHANGE MARKET

23 Q. BASED ON YOUR GENERAL UNDERSTANDING OF THE
24 INDUSTRY, WHAT WOULD YOU EXPECT THE FUTURE TO HOLD
25 IN THE WAY OF LOCAL EXCHANGE COMPETITION?

26 A. Full scale local exchange competition will develop following the
27 expansion of competition in the toll, access and private line arenas.
28 Given the degree of competition in Arizona today, the presence of local
29 exchange competitors and the permissive FCC policies now in place, I
30 would anticipate a rapid acceleration in local exchange competition in

APPENDIX #6

- ii. The capital cost, construction time, and construction spending schedule.
- c. The escalation levels assumed for each component of cost for each generating unit and purchased power source.
- d. For the discontinuation, decommissioning, or mothballing of any power source and permanent deratings of any generating facility:
 - i. Identification of the power sources or units involved,
 - ii. The costs and spending schedule of such discontinuation, decommissioning, mothballing, or derating, and
 - iii. The reasons for discontinuation, decommissioning, mothballing, or derating.
- e. The capital and operating and maintenance costs of new or refurbished transmission and distribution facilities, and a description of the need for and purpose of such facilities.
2. Documentation of the data, assumptions, and methods or models used to forecast production costs and power production in subsection (D)(1) of this Section, including the method by which the forecast was calibrated or benchmarked.
3. Description of each potential power source which was rejected, the capital and operating and maintenance costs of each rejected source, and the reasons for rejecting each source.
4. Ten-year forecast of cogeneration and other self generation by customers of the utility in terms of annual peak production (megawatts) and annual energy production (megawatt hours).
5. Disaggregation of the forecast of subsection (D)(4) of this Section into a component in which no additional efforts are made to encourage such generation, and a component consisting of the change in supply due to additional forecasted cogeneration and self generation measures.
6. Ten-year forecast of capital and operating and maintenance costs by year of all cogeneration and other self generation included in subsection (D)(5) of this Section.
7. Documentation of the analysis of cogeneration and other self generation in subsection (D)(4) through (6) of this Section.
- E. Analyses of uncertainty. Each utility shall provide to the Commission the following information by December 31, 1989, and every three years thereafter:
 1. Analyses using appropriate methods such as sensitivity analyses and probabilistic analyses, to assess errors and uncertainty in:
 - a. Demand forecasts,
 - b. The costs of demand management measures and power supply,
 - c. The availability of sources of power,
 - d. Changes in fuel prices, and
 - e. Other factors which the utility wishes to consider.
 2. Identification of those options which enable the utility to best respond to significant changes in conditions whose future characteristics are uncertain, including:
 - a. Continual monitoring of critical variables and making commensurate changes in plans if those variables deviate significantly from the forecast,
 - b. Building several smaller units instead of one large unit,
 - c. Sharing capacity with other utilities, and
 - d. Conducting well monitored pilot programs.
- F. Integrated resource plan. Each utility shall provide the commission with an integrated resource plan by December 31, 1989, and every three years thereafter containing:

1. The ten year plan or flexible set of plans which, on the basis of the analyses required in this Article, including the uncertainty analysis, will tend to minimize the present value of the total cost of meeting the demand for electric energy services.
2. Complete description and documentation of the least cost plan, including supply and demand side conditions, costs, and discount rates utilized.
3. An action plan indicating the supply and demand-related actions to be undertaken by the utility over the next three years in furtherance of the ten-year plan.

Historical Note

Adopted effective February 3, 1989 (Supp. 89-1).

R14-2-704. Commission review of utility plans

- A. Within 120 days of the submission of demand forecasts, supply plans, uncertainty analyses, and integrated resource plans by the utilities, the Commission shall schedule a hearing or hearings to review utility filings and to determine the degree of consistency between these filings and analyses conducted by the staff and information provided by other parties.
- B. The Commission may request additional analyses to be conducted by the utilities to improve specified components of the utilities' analyses.
- C. In making its consistency determination, the Commission shall consider the following factors:
 1. The total cost of electric energy services.
 2. The degree to which the factors which affect demand, including demand management, have been taken into account.
 3. The degree to which non-utility supply alternatives, such as cogeneration and self generation, have been taken into account.
 4. Uncertainty in demand and supply analyses, forecasts, and plans, and the flexibility of plans enabling response to unforeseen changes in supply and demand factors.
 5. The reliability of power supplies.
- D. The commission may subsequently consider its consistency determination in its review of financing applications, in general rate cases, and in other matters in which the supply of or demand for energy services is a significant factor.

Historical Note

Adopted effective February 3, 1989 (Supp. 89-1).

ARTICLE 8. PUBLIC UTILITY HOLDING COMPANIES AND AFFILIATED INTERESTS

R14-2-801. Definitions

In this Article, unless the context otherwise requires:

1. "Affiliate", with respect to the public utility, shall mean any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, the public utility. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the power to direct the management policies of such entity, whether through ownership of voting securities, or by contract, or otherwise.
2. "Commission." The Arizona Corporation Commission.
3. "Entity." A corporation, partnership, limited partnership, joint venture, trust, estate, or natural person.
4. "Holding Company" or "Public Utility Holding Company." Any affiliate that controls a public utility.
5. "Reorganize" or "Reorganization." The acquisition or divestiture of a financial interest in an affiliate or a utility, or reconfiguration of an existing affiliate or utility's position in

the corporate structure or the merger or consolidation of an affiliate or a utility.

6. "Subsidiary." Any affiliate controlled by a utility.
7. "System of Accounts. The accounting system or systems prescribed for utilities by the Commission.
8. "Utility" or "Public Utility. Any Class A investor-owned public service corporation subject to the jurisdiction of the Arizona Corporation Commission.

Historical Note

Adopted effective July 30, 1992 (Supp. 92-3).

R14-2-802. Applicability

- A. These rules are applicable to all Class A investor-owned utilities under the jurisdiction of the Commission and are applicable to all transactions entered into after the effective date of these rules.
- B. Information furnished to the Commission in compliance with these rules will not be open to public inspection, or made public, except on order of the Commission, or by the Commission, or a Commissioner in the course of a hearing or proceeding.

Historical Note

Adopted effective July 30, 1992 (Supp. 92-3).

R14-2-803. Organization of Public Utility Holding Companies

- A. Any utility or affiliate intending to organize a public utility holding company or reorganize an existing public utility holding company will notify the Commission's Utilities Division in writing at least 120 days prior thereto. The notice of intent will include the following information:
 1. The names and business addresses of the proposed officers and directors of the holding company;
 2. The business purposes for establishing or reorganizing the holding company;
 3. The proposed method of financing the holding company and the resultant capital structure;
 4. The resultant effect on the capital structure of the public utility;
 5. An organization chart of the holding company that identifies all affiliates and their relationships within the holding company;
 6. The proposed method for allocating federal and state income taxes to the subsidiaries of the holding company;
 7. The anticipated changes in the utility's cost of service and the cost of capital attributable to the reorganization;
 8. A description of diversification plans of affiliates of the holding company; and
 9. Copies of all relevant documents and filings with the United States Securities and Exchange Commission and other federal or state agencies.
 10. The contemplated annual and cumulative investment in each affiliate for the next five years, in dollars and as a percentage of projected net utility plant, and an explanation of the reasons supporting the level of investment and the reasons this level will not increase the risks of investment in the public utility.
 11. An explanation of the manner in which the utility can assure that adequate capital will be available for the construction of necessary new utility plant and for improvements in existing utility plant at no greater cost than if the utility or its affiliate did not organize or reorganize a public utility holding company.
- The Commission staff will, within 30 days after receipt of the notice of intent, notify the Applicant of any questions which it has concerning the notice or supporting information. The Commission will, within 60 days from the receipt of the notice of intent, determine whether to hold a hearing on the matter or approve the organization or reorganization without a hearing.

- C. At the conclusion of any hearing on the organization or reorganization of a utility holding company, the Commission may reject the proposal if it determines that it would impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

Historical Note

Adopted effective July 30, 1992 (Supp. 92-3).

R14-2-804. Commission Review of Transactions Between Public Utilities and Affiliates

- A. A utility will not transact business with an affiliate unless the affiliate agrees to provide the Commission access to the books and records of the affiliate to the degree required to fully audit, examine or otherwise investigate transactions between the public utility and the affiliate. In connection therewith, the Commission may require production of books, records, accounts, memoranda and other documents related to these transactions.
- B. A utility will not consummate the following transactions without prior approval by the Commission:
 1. Obtain a financial interest in any affiliate not regulated by the Commission, or guarantee, or assume the liabilities of such affiliate;
 2. Lend to any affiliate not regulated by the Commission, with the exception of short-term loans for a period less than 12 months in an amount less than \$100,000; or
 3. Use utility funds to form a subsidiary or divest itself of any established subsidiary.
- C. The Commission will review the transactions set forth in subsection (B) above to determine if the transactions would impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.
- D. Every transaction in violation of subsection (A) or (B) above is void, and the transaction shall not be made on the books of any public service corporation.
- E. The system of accounts used by the public utility will include the necessary accounting records needed to record and compile transactions with each affiliate.

Historical Note

Adopted effective July 30, 1992 (Supp. 92-3).

R14-2-805. Annual Filing Requirements of Diversification Activities and Plans

- A. On or before April 15th of each calendar year, all public utilities meeting the requirements of R14-2-802 and public utility holding companies will provide the Commission with a description of diversification plans for the current calendar year that have been approved by the Boards of Directors. As part of these filings, each public utility meeting the requirements of R14-2-802 will provide the Commission the following information:
 1. The name, home office location and description of the public utility's affiliates with whom transactions occur, their relationship to each other and the public utility, and the general nature of their business;
 2. A brief description of the business activities conducted by the utility's affiliates with whom transactions occurred during the prior year, including any new activities not previously reported;
 3. A description of plans for the utility's subsidiaries to modify or change business activities, enter into new business ventures or to acquire, merge or otherwise establish a new business entity;
 4. Copies of the most recent financial statements for each of the utility's subsidiaries;

5. An assessment of the effect of current and planned affiliated activities on the public utility's capital structure and the public utility's ability to attract capital at fair and reasonable rates;
 6. The bases upon which the public utility holding company allocates plant, revenue and expenses to affiliates and the amounts involved; an explanation of the derivation of the factors; the reasons supporting that methodology and the reasons supporting the allocation;
 7. An explanation of the manner in which the utility's capital structure, cost of capital and ability to raise capital at reasonable rates have been affected by the organization or reorganization of the public utility holding company;
 8. The dollar amount transferred between the utility and each affiliate during the annual period, and the purpose of each transfer;
 9. Contracts or agreements to receive, or provide management, engineering, accounting, legal, financial or other similar services between a public utility and an affiliate;
 10. Contracts or agreements to purchase or sell goods or real property between a public utility and an affiliate; and
 11. Contracts or agreements to lease goods or real property between a public utility and an affiliate.
- B. After reviewing the diversification plans, the Commission may, within 90 days after plans have been provided, request additional information, or order a hearing, or both, should it conclude after its review that the business activities would impair the financial status of the public utility, otherwise prevent it from attracting capital at fair and reasonable terms, or impair the ability of the public utility to provide safe, reasonable and adequate service.

Historical Note

Adopted effective July 30, 1992 (Supp. 92-3).

R14-2-806. Waiver from the Provisions of this Article

- A. The Commission may waive compliance with any of the provisions of this Article upon a finding that such waiver is in the public interest.
- B. Any affected entity may petition the Commission for a waiver by filing a verified application for waiver setting forth with specificity the circumstances whereby the public interest justifies noncompliance with all or part of the provisions of this Article.
- C. If the Commission fails to approve, disapprove, or suspend for further consideration an application for waiver within 30 days following filing of a verified application for waiver, the waiver shall become effective on the 31st day following filing of the application.

Historical Note

Adopted effective July 30, 1992 (Supp. 92-3).

ARTICLE 9. CUSTOMER-OWNED PAY TELEPHONES

R14-2-901. Definitions

In this Article, unless the context otherwise requires:

1. "Affiliate" means any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, a customer of record. For purposes of this paragraph, the term "control, (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any entity, means the power to direct the management policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

2. "Customer of record" means a premises owner or vendor, who has either applied to, or who has obtained from, an LEC an access line to be a COPT provider.
3. "Customer-owned pay telephone (COPT) provider" means an entity authorized by the Commission to provide public pay telephone service to end-users and which is not a certificated LEC on the effective date of this Article. For purposes of compliance with Article 5 of this Chapter, "COPT provider" does not mean a "utility" as defined in R14-2-501(24).
4. "'800' service" means calls to telephone numbers which normally can be reached without charge to the calling party by dialing 1-800 plus seven digits.
5. "Entity" means a corporation, partnership, limited partnership, joint venture, trust, estate, or natural person.
6. "Local exchange company (LEC)" means a company which is certificated to operate the local public switched telecommunications network.
7. "Public access line (PAL)" means any LEC tariff under which COPT providers are authorized to obtain access to the local and interexchange telecommunications network.

Historical Note

Adopted effective September 16, 1992 (Supp. 92-3).

R14-2-902. Application for Certificate of Convenience and Necessity

- A. Within 30 days of the effective date of this Article, all LEC's shall provide written notification of the requirements of this Article to each of their existing customers of record. Such notification shall be in a form acceptable to the Commission and shall explain that all customers of record are required to file either an application for a certificate of convenience and necessity (CC&N) pursuant to this Section or an application for an adjudication not a public service corporation pursuant to R14-2-904.
- B. Any customer of record requesting PAL service subsequent to the effective date of this Article who was not subject to the provisions of subsections (A) and (E) of this Section, or whose PAL service was terminated pursuant to the provisions of this Article, shall provide to the LEC proof of either:
 1. A CC&N granted pursuant to this Section; or
 2. An adjudication order declaring that it is not a public service corporation pursuant to R14-2-904.
- C. All customers of record shall submit to the Commission an original and ten copies of an application for a CC&N. A customer of record who has COPT's placed in more than one location may apply for a single CC&N to cover all locations served.
- D. Each customer of record shall submit an application on a form provided by the Commission which includes all of the following information:
 1. The name and address of the customer of record, including a contact person for coordinating communications with the Commission and a contact person or telephone number for maintenance and complaint handling. If the customer of record is other than an individual, a listing of the officers, directors, or partners and a copy of the articles of incorporation, partnership agreement, or other organizational document shall be provided.
 2. A description of all affiliated relationships between the customer of record and any public service corporation or telecommunications company.
 3. The addresses and descriptions of locations to be served, including the name of the serving LEC.
 4. A description of the equipment being used to provide service.
 5. A list of services provided and the proposed rates.